IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.295 of 2004

Reserved on : October 29, 2007

Decided on : November 2, 2007

Rajiv Kumar alias Guglu **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Anup Chitkara, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

Appellant is aggrieved by the judgment of the trial Court whereby he has been convicted of offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,00,000/-, in default of payment to fine to undergo rigorous imprisonment for a further period of two years.

2. Appellant was sent up for trial for an offence, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, by the Police, on the following allegations. On 23.5.2003 when a Police Party, headed by PW-10 ASI Harbans Lal and comprising PW-2 HC Sarbjit Singh, PW-3 Constable Sanjiv Kumar and PW-5 HHC Sher Bahadur, as its other members, was present in village Laluwal in

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Whether reporters of the local papers may be allowed to see the judgment?

connection with routine patrolling, PW-1 Constable Suresh Kumar met it and informed PW-10 ASI Harbans Lal that he had secret information that the appellant had kept poppy straw in his house in village Bolewal and that if search was conducted, without loss of any time, huge quantity of the contraband could be recovered. That information was reduced into writing, in the form of statement of PW-1 Constable Suresh Kumar, by PW-10 ASI Harbans Lal for the formal registration of the case and also to meet the requirement of Section 42(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Thereafter, a raiding party was formed. PW-11 Ranjodh Singh and PW-4 Ashwani Kumar were associated as independent members of the party. The party went to the house of the appellant in village Bolewal. Appellant was present in the house. The room in which he was found was searched. Two gunny bags containing poppy straw were found. On weighment, one bag was found to contain 50.500 kgs. and the other 42.500 kgs. Two samples, each weighing 250 grams, were separated, from each of the two gunny bags and made into separate parcels. The samples were marked H-1 and H-2 and sealed with a seal that produced the impression of letter ‘A’ of English alphabet. One sample from each of the two bags was sent to the Chemical Examiner, who opined that both the samples contained contents of poppy husk.

3. On the completion of the investigation and receipt of the report of the Chemical Examiner, appellant was challaned. He was charged with the offence punishable under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, for possessing commercial quantity of poppy straw. He pleaded not guilty to the charge and was, therefore, ordered to be tried. On conclusion of the

trial, the Court found him guilty and convicted and sentenced, as aforesaid.

4. Matter was heard earlier by another Bench of which one of us (Surjit Singh, J.) was a Member and judgment was reserved. The said Division Bench while examining the record for the purpose of recording the judgment noticed that the Chemical Examiner conducted two tests, one for meconic acid and another for morphine, and found that the sample stuff tested positive for both the aforesaid things and on the basis of result of such tests gave the opinion that the sample stuff contained the contents of poppy husk. We felt that perhaps these two tests were not enough to come to the conclusion that the sample stuff was poppy husk or poppy straw, because the aforesaid tests were indicative of only this fact that the straw had traces of meconic acid and morphine. Therefore, the matter was released with the orders that the Chemical Examiner be summoned and examined as a Court witness. The matter was then listed before the present Bench. We recorded the statement of the Chemical Examiner on 3rd October, 2007, in the form of question-answers.

5. The Chemical Examiner stated that the two tests conducted by him, as per report Ex. PW-10/L, were indicative that the straw was either of the plant of species of papaver somniferum-L or a plant of any other species of papaver from which opium or phenanthrene alkaloid can be extracted or a mixture of plants of the species of papaver somniferum-L and any other plant of papaver species yielding opium or any phenanthrene alkaloid. He admitted that the tests conducted by him did not specifically indicate whether the straw was of a plant of species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other

phenanthrene alkaloid can be extracted and which the Central Government may have notified for the purpose of Clause (b) of Section 2(xvii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. On further questioning, he admitted that the straw could have been of a plant of papaver species yielding opium or any other phenanthrene alkaloid and which(plant) may not have been even notified by the Central Government for the purpose of Clause (b) of Section 2(xvii) of the Act. He stated that there was no equipment available in his laboratory for conducting any botanical tests to determine the species of a plant by examining the straw. He also admitted that there was no expert available in his laboratory to give definite opinion about the species of the plant by analyzing/testing the straw supplied to him.

6. Referring to the report Ex. PW-10/L and the statement of the Chemical Examiner recorded by us, the substance whereof has been noticed hereinabove, the learned counsel for the appellant urged that there was no evidence on record that the substance that was allegedly recovered from the house of the appellant was poppy straw, within the meaning of Section 2(xviii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. He submitted that poppy straw means all parts (except seeds) of the plant of the species of papaver somniferum-L or the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which (the later mentioned plant) the Central Government might have notified to be opium poppy.

7. For appreciation of the argument of the learned counsel, definitions of “poppy straw” and “opium poppy” given in the Narcotic Drugs and Psychotropic Substances Act, 1985, need to be noticed. The same are reproduced here for ready reference.

> "Section 2(xviii), "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.
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> Section 2(xvii), "opium poppy" means__
>
> (a) the plant of the species Papaver somniferum L.; and
>
> (b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act."

8. From the definition of poppy straw, as reproduced hereinabove, it is clear that to understand the meaning of poppy straw, it is essential to refer to the meaning of opium poppy. Poppy straw, when read alongwith the definition of opium poppy, means (a) all parts (except seeds) of the plant of the species of papaver somniferum-L and all parts (except seeds) of the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may by notification in the official gazette declare to be opium poppy for the purposes of Narcotic Drugs and Psychotropic Substances Act, 1985.

9. In the present case, as is clear from the statement of the Chemical Examiner, recorded by us, the two tests conducted by him to ascertain whether the stuff contained meconic acid and morphine, do not indicate that the stuff examined consisted of the parts of either the plant of the species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified to be the opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985. If it is so, the report of the

Chemical Examiner, Ex. PW-10/L, that the stuff contains contents of poppy husk, which term is similar to the term “poppy straw”, cannot be used as enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical Examiner, was poppy straw.

10. In this view of the matter, we derive strength from a judgment of the Hon’ble Supreme Court in ***Amarsingh Ramjibhai Barot versus State of Gujarat, (2005) 7 Supreme Court Cases 550.*** Facts of that case were that some black substance, looking like opium, was recovered from the accused. A sample of the substance was sent to the Chemical Examiner, who reported that the sample was “opium as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, containing 2.8 per cent anhydride morphine and also pieces of poppy flowers (*posedoda*)”. The Hon’ble Supreme Court noticed the definition of opium as given in Section 2(xv) of the Narcotic Drugs and Psychotropic Substances Act, 1985, according to which, “opium” means (a) the coagulated juice of opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine. The Hon’ble Supreme Court held that there did not appear any acceptable evidence that the black substance found with the appellant was “coagulated juice of the opium poppy” and “any mixture, with or without any neutral material of the coagulated juice of the opium poppy” and that the opinion given by the FSL that it was opium, as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, was not binding on the Court.

11. In view of what has been stated hereinabove, we hold that the substance allegedly recovered from the appellant has not been

proved to be poppy straw, within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, and, therefore, he is not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently, the appeal is accepted, judgment of the trial Court convicting and sentencing the appellant for offence under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is set aside and the appellant is acquitted. He being in jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

(Surjit Singh), J

November 2, 2007(sd) **(Surinder Singh), J**